

Amendment to the Amendment

in the Nature of a Substitute

Offered By Mr.

[Privacy]

At the end of the Amendment in the Nature of a Substitute, add the following new title (and conform the table of contents accordingly):

- 1 **TITLE V—PRIVACY OF**
2 **CONSUMER INFORMATION**
3 **Subtitle A—Disclosure of**
4 **Nonpublic Personal Information**
5 **SEC. 501. OBLIGATIONS WITH RESPECT TO PERSONAL IN-**
6 **FORMATION.**
7 (a) GENERAL REQUIREMENTS.—Except as otherwise
8 provided in this subtitle, a financial institution may not,
9 directly or through any affiliate, divulge or make an unre-
10 lated use of any nonpublic personal information collected
11 by the financial institution in connection with any trans-
12 action with a consumer in any financial product or any
13 financial service, unless—
14 (1) such financial institution provides or has
15 provided to the consumer a notice that complies with
16 section 502 and the rules thereunder; and

1 (2) such financial institution maintains proce-
2 dures to protect the confidentiality and security of
3 nonpublic personal information.

4 (b) GENERAL EXCEPTIONS.—Subsection (a) shall not
5 prohibit the divulging of nonpublic personal information,
6 or the making of an unrelated use of such information,
7 by the financial institution as necessary—

8 (1) to effect or enforce such transaction or a re-
9 lated transaction;

10 (2) to protect the confidentiality or security of
11 its records pertaining to the consumer, the financial
12 service or financial product, or the transaction there-
13 in;

14 (3) to take precautions against liability;

15 (4) to respond to judicial process; or

16 (5) to the extent permitted or required under
17 other provisions of law and in accordance with the
18 Right to Financial Privacy Act of 1974, to provide
19 information to law enforcement agencies (including a
20 functional regulator or the Commission) or for an
21 investigation on a matter related to public safety.

22 **SEC. 502. NOTICE CONCERNING DIVULGING INFORMATION.**

23 (a) RULE REQUIRED.—The Commission shall, after
24 consultation with the functional regulators, prescribe rules
25 in accordance with this section to prohibit unfair and de-

1 ceptive acts and practices in connection with the divulging
2 of nonpublic personal information or with making unre-
3 lated uses of such information. Such rules shall require
4 any financial institution, through the use of a form that
5 complies with the rules prescribed under subsection (b),
6 to clearly and conspicuously disclose to the consumer—

7 (1) what categories of information are collected
8 by the financial institution;

9 (2) the practices and policies of the financial in-
10 stitution with respect to divulging nonpublic per-
11 sonal information, or making unrelated uses of such
12 information, including—

13 (A) the categories of persons to whom the
14 information is or may be divulged or who may
15 be permitted to make unrelated uses of such in-
16 formation, other than the persons to whom the
17 information must be provided to effect or en-
18 force the transaction; and

19 (B) the practices and policies of the insti-
20 tution with respect to divulging or making un-
21 related uses of nonpublic personal information
22 of persons who have ceased to be customers of
23 the financial institution; and

1 (3) the procedures that the institution main-
2 tains to protect the confidentiality and security of
3 nonpublic personal information.

4 (b) DESIGN OF NOTICE REQUIREMENTS.—In pre-
5 scribing the form of a notice for purposes of subsection
6 (a), the Commission shall ensure that consumers are read-
7 ily able to compare and evaluate differences in the meas-
8 ures that the financial institution takes, and the policies
9 that the institution has established, to protect the con-
10 sumer's privacy as compared to the measures taken and
11 the policies established by other financial institutions.
12 Such form shall specifically identify any rights the institu-
13 tion affords consumers to grant or deny consent to (1)
14 the divulging of nonpublic personal information for any
15 purpose other than as required in order to effect or en-
16 force the consumer's transaction, or (2) the making of an
17 unrelated use of such information.

18 (c) ADDITIONAL CONTENTS OF RULES.—The Com-
19 mission shall, by rule after consultation with the func-
20 tional regulators, and may by order—

21 (1) specify the divulgences and uses of informa-
22 tion which, for purposes of this subtitle and the
23 rules prescribed thereunder, may be treated as nec-
24 essary to effect or enforce a consumer's transaction

1 with respect to a variety of financial services and fi-
2 nancial products;

3 (2) specify timing requirements with respect to
4 notices to existing and new customers; and

5 (3) provide, consistent with the purposes of this
6 subtitle, exemptions or temporary waivers to, or de-
7 layed effective dates for, any requirement of this
8 subtitle or the rules prescribed thereunder.

9 (d) RULEMAKING DEADLINE.—The Commission and
10 each functional regulator shall prescribe (or designate) the
11 rules required by this section within one year after the
12 date of enactment of this Act. Such rules shall be pre-
13 scribed in accordance with section 553 of title 5, United
14 States Code.

15 **SEC. 503. ENFORCEMENT.**

16 (a) IN GENERAL.—This subtitle and the rules pre-
17 scribed thereunder shall be enforced by the Federal Trade
18 Commission under the Federal Trade Commission Act (15
19 U.S.C. 41 et seq.).

20 (b) ACTIONS BY THE COMMISSION.—The Federal
21 Trade Commission shall prevent any person from violating
22 this subtitle and the rules prescribed thereunder in the
23 same manner, by the same means, and with the same ju-
24 risdiction, powers, and duties as though all applicable
25 terms and provisions of the Federal Trade Commission

1 Act (15 U.S.C. 41 et seq.) were incorporated into and
2 made a part of this subtitle. Any person who violates this
3 subtitle or the rules prescribed thereunder shall be subject
4 to the penalties and entitled to the privileges and immuni-
5 ties provided in the Federal Trade Commission Act in the
6 same manner, by the same means, and with the same ju-
7 risdiction, power, and duties as though all applicable terms
8 and provisions of the Federal Trade Commission Act were
9 incorporated into and made a part of this subtitle.

10 (c) TREATMENT OF RULES.—A rule issued by the
11 Commission under section 502 shall be treated as a rule
12 issued under section 18(a)(1)(B) of the Federal Trade
13 Commission Act (15 U.S.C. 57a(a)(1)(B)).

14 **SEC. 505. DEFINITIONS.**

15 As used in this subtitle:

16 (1) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (2) FUNCTIONAL REGULATOR.—The term
19 “functional regulator” means—

20 (A) the Board of Governors of the Federal
21 Reserve System;

22 (B) the Office of the Comptroller of the
23 Currency;

24 (C) the Board of Directors of the Federal
25 Deposit Insurance Corporation;

1 (D) the Director of the Office of Thrift
2 Supervision;

3 (E) the National Credit Union Administra-
4 tion Board;

5 (F) the Farm Credit Administration; and

6 (G) the Securities and Exchange Commis-
7 sion.

8 (3) FINANCIAL INSTITUTION.—The term “fi-
9 nancial institution” means any institution the busi-
10 ness of which is engaging in financial activities, ac-
11 tivities that are incidental to financial activities, or
12 activities that are complementary to such financial
13 activities, as determined under section 6(c) of the
14 Bank Holding Company Act of 1956 or section
15 17(i)(7) of the Securities Exchange Act of 1934.
16 Such term, when used in connection with a trans-
17 action for a consumer, means only the financial in-
18 stitution with which the consumer expects to conduct
19 such transaction and does not include any affiliate,
20 subsidiary, or contractually-related party of that fi-
21 nancial institution, even if such affiliate, subsidiary,
22 or party is also a financial institution and partici-
23 pates in the effecting or enforcement of such trans-
24 action.

1 (4) NONPUBLIC PERSONAL INFORMATION.—

2 The term “nonpublic personal information” means
3 information, other than publicly available directory
4 information, pertaining to an individual’s trans-
5 actions with a financial institution.

6 (5) DIRECTORY INFORMATION.—The term ‘pub-
7 licly available directory information’ means sub-
8 scriber list information required to be made available
9 for publication pursuant to section 222(e) of the
10 Communications Act of 1934 (47 U.S.C. 222(3)).

11 (6) UNRELATED USE.—The term “unrelated
12 use”, when used with respect to information col-
13 lected by the financial institution in connection with
14 any transaction with a consumer in any financial
15 product or any financial service, means any use
16 other than a use that is necessary to effect or en-
17 force such transaction.

18 (7) NECESSARY TO EFFECT OR ENFORCE.—The
19 divulging or use of nonpublic personal information
20 shall be treated—

21 (A) as necessary to effect a transaction
22 with a consumer if the divulging or use is re-
23 quired, or is one of the usual and accepted
24 methods, to carry out the transaction in the or-
25 dinary course of providing the financial service

1 or financial product, and includes providing the
2 consumer with a confirmation, statement, or
3 other record of the transaction, or information
4 on the status or value of the financial service or
5 financial product;

6 (B) as necessary to enforce a transaction
7 with a consumer if the divulging or use is re-
8 quired, or is one of the lawful methods, to en-
9 force the rights of the financial institution or of
10 other persons engaged in carrying out the fi-
11 nancial transaction, or providing the financial
12 product or financial service.

13 The Commission shall, consistent with the purposes
14 of this subtitle, prescribe by rule actions that shall,
15 in a variety of financial services, and with respect to
16 a variety of financial products, be treated as nec-
17 essary to effect or enforce a financial transaction.

18 (8) FINANCIAL SERVICES; FINANCIAL PROD-
19 UCTS; TRANSACTION; RELATED TRANSACTION.—The
20 Commission shall, consistent with the purposes of
21 this subtitle, prescribe by rule definitions of the
22 terms “financial services”, “financial products”,
23 “transaction”, and “related transaction” for pur-
24 poses of this subtitle.

1 **SEC. 506. EFFECTIVE DATE.**

2 This subtitle shall take effect one year after the date
3 on which the Commission prescribes in final form the rules
4 required by section 502(a), except to the extent that a
5 later date is specified in such rules.

6 **Subtitle B—Fraudulent Access to**
7 **Financial Information**

8 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
9 **TION OF FINANCIAL INSTITUTIONS.**

10 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
11 MATION BY FALSE PRETENSES.—It shall be a violation
12 of this subtitle for any person to obtain or attempt to ob-
13 tain, or cause to be disclosed or attempt to cause to be
14 disclosed to any person, customer information of a finan-
15 cial institution relating to another person—

16 (1) by making a false, fictitious, or fraudulent
17 statement or representation to an officer, employee,
18 or agent of a financial institution;

19 (2) by making a false, fictitious, or fraudulent
20 statement or representation to a customer of a fi-
21 nancial institution; or

22 (3) by providing any document to an officer,
23 employee, or agent of a financial institution, know-
24 ing that the document is forged, counterfeit, lost, or
25 stolen, was fraudulently obtained, or contains a

1 false, fictitious, or fraudulent statement or represen-
2 tation.

3 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
4 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
5 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-
6 lation of this subtitle to request a person to obtain cus-
7 tomer information of a financial institution, knowing that
8 the person will obtain, or attempt to obtain, the informa-
9 tion from the institution in any manner described in sub-
10 section (a).

11 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
12 AGENCIES.—No provision of this section shall be con-
13 strued so as to prevent any action by a law enforcement
14 agency, or any officer, employee, or agent of such agency,
15 to obtain customer information of a financial institution
16 in connection with the performance of the official duties
17 of the agency.

18 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
19 IN CERTAIN CASES.—No provision of this section shall be
20 construed so as to prevent any financial institution, or any
21 officer, employee, or agent of a financial institution, from
22 obtaining customer information of such financial institu-
23 tion in the course of—

1 (1) testing the security procedures or systems
2 of such institution for maintaining the confiden-
3 tiality of customer information;

4 (2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 (3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
13 provision of this section shall be construed so as to prevent
14 any insurance institution, or any officer, employee, or
15 agency of an insurance institution, from obtaining infor-
16 mation as part of an insurance investigation into criminal
17 activity, fraud, material misrepresentation, or material
18 nondisclosure that is authorized for such institution under
19 State law, regulation, interpretation, or order.

20 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
22 provision of this section shall be construed so as to prevent
23 any person from obtaining customer information of a fi-
24 nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

4 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
5 SION.—Compliance with this subtitle shall be enforced by
6 the Federal Trade Commission in the same manner and
7 with the same power and authority as the Commission has
8 under the title VIII, the Fair Debt Collection Practices
9 Act, to enforce compliance with such title.

10 (b) NOTICE TO SEC OF ACTIONS.—The Federal
11 Trade Commission shall notify the Securities and Ex-
12 change Commission whenever the Federal Trade Commis-
13 sion initiates an investigation with respect to a financial
14 institution subject to regulation by the Securities and Ex-
15 change Commission.

16 **SEC. 523. CRIMINAL PENALTY.**

17 (a) IN GENERAL.—Whoever knowingly and inten-
18 tionally violates, or knowingly and intentionally attempts
19 to violate, section 521 shall be fined in accordance with
20 title 18, United States Code, or imprisoned for not more
21 than 5 years, or both.

22 (b) ENHANCED PENALTY FOR AGGRAVATED
23 CASES.—Whoever violates, or attempts to violate, section
24 521 while violating another law of the United States or
25 as part of a pattern of any illegal activity involving more

1 than \$100,000 in a 12-month period shall be fined twice
2 the amount provided in subsection (b)(3) or (c)(3) (as the
3 case may be) of section 3571 of title 18, United States
4 Code, imprisoned for not more than 10 years, or both.

5 **SEC. 524. RELATION TO STATE LAWS.**

6 (a) IN GENERAL.—This subtitle shall not be con-
7 strued as superseding, altering, or affecting the statutes,
8 regulations, orders, or interpretations in effect in any
9 State, except to the extent that such statutes, regulations,
10 orders, or interpretations are inconsistent with the provi-
11 sions of this subtitle, and then only to the extent of the
12 inconsistency.

13 (b) GREATER PROTECTION UNDER STATE LAW.—
14 For purposes of this section, a State statute, regulation,
15 order, or interpretation is not inconsistent with the provi-
16 sions of this subtitle if the protection such statute, regula-
17 tion, order, or interpretation affords any person is greater
18 than the protection provided under this subtitle.

19 **SEC. 525. AGENCY GUIDANCE.**

20 In furtherance of the objectives of this subtitle, each
21 Federal banking agency (as defined in section 3(z) of the
22 Federal Deposit Insurance Act) and the Securities and
23 Exchange Commission or self-regulatory organizations, as
24 appropriate, shall review regulations and guidelines appli-
25 cable to financial institutions under their respective juris-

1 ditions and shall prescribe such revisions to such regula-
2 tions and guidelines as may be necessary to ensure that
3 such financial institutions have policies, procedures, and
4 controls in place to prevent the unauthorized disclosure
5 of customer financial information and to deter and detect
6 activities proscribed under section 521.

7 **SEC. 526. REPORTS.**

8 (a) REPORT TO THE CONGRESS.—Before the end of
9 the 18-month period beginning on the date of the enact-
10 ment of this Act, the Comptroller General, in consultation
11 with the Federal Trade Commission, Federal banking
12 agencies, the Securities and Exchange Commission, and
13 appropriate Federal law enforcement agencies, shall sub-
14 mit to the Congress a report on the following:

15 (1) The efficacy and adequacy of the remedies
16 provided in this subtitle in addressing attempts to
17 obtain financial information by fraudulent means or
18 by false pretenses.

19 (2) Any recommendations for additional legisla-
20 tive or regulatory action to address threats to the
21 privacy of financial information created by attempts
22 to obtain information by fraudulent means or false
23 pretenses.

24 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
25 CIES.—The Federal Trade Commission and the Attorney

1 General shall submit to Congress an annual report on
2 number and disposition of all enforcement actions taken
3 pursuant to this subtitle.

4 **SEC. 527. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions
6 shall apply:

7 (1) CUSTOMER.—The term “customer” means,
8 with respect to a financial institution, any person (or
9 authorized representative of a person) to whom the
10 financial institution provides a product or service,
11 including that of acting as a fiduciary.

12 (2) CUSTOMER INFORMATION OF A FINANCIAL
13 INSTITUTION.—The term “customer information of
14 a financial institution” means any information main-
15 tained by or for a financial institution which is de-
16 rived from the relationship between the financial in-
17 stitution and a customer of the financial institution
18 and is identified with the customer.

19 (3) DOCUMENT.—The term “document” means
20 any information in any form.

21 (4) FINANCIAL INSTITUTION.—

22 (A) IN GENERAL.—The term “financial in-
23 stitution” means any institution engaged in the
24 business of providing financial services to cus-
25 tomers who maintain a credit, deposit, trust, or

1 other financial account or relationship with the
2 institution.

3 (B) CERTAIN FINANCIAL INSTITUTIONS
4 SPECIFICALLY INCLUDED.—The term “financial
5 institution” includes any depository institution
6 (as defined in section 19(b)(1)(A) of the Fed-
7 eral Reserve Act), any broker or dealer, any in-
8 vestment adviser or investment company, any
9 insurance company, any loan or finance com-
10 pany, any credit card issuer or operator of a
11 credit card system, and any consumer reporting
12 agency that compiles and maintains files on
13 consumers on a nationwide basis (as defined in
14 section 603(p)).

15 (C) SECURITIES INSTITUTIONS.—For pur-
16 poses of subparagraph (B)—

17 (i) the terms “broker” and “dealer”
18 have the meanings provided in section 3 of
19 the Securities Exchange Act of 1934 (15
20 U.S.C. 78c);

21 (ii) the term “investment adviser” has
22 the meaning provided in section 202(a)(11)
23 of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b-2(a)); and

1 (iii) the term “investment company”
2 has the meaning provided in section 3 of
3 the Investment Company Act of 1940 (15
4 U.S.C. 80a-3).

5 (D) FURTHER DEFINITION BY REGULA-
6 TION.—The Federal Trade Commission, after
7 consultation with Federal banking agencies and
8 the Securities and Exchange Commission, may
9 prescribe regulations clarifying or describing
10 the types of institutions which shall be treated
11 as financial institutions for purposes of this
12 subtitle.